

# **EXHIBIT 11**

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4 New York State Supreme Court  
5 60 Centre Street - Room 420  
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8 July 22, 2011

9 To:

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11 Attorneys at Law  
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14 Attention: Amiad M. Kushner

15 TITLE OF ACTION: Libertyview  
16 INDEX CASE NO: 651998/11

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Terry-Ann Volberg, Official Court Reporter, CSR, CRR

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: TRIAL TERM PART 49

- - - - - X

LIBERTYVIEW CREDIT OPPORTUNITIES FUND., L.P.,  
LIBERTYVIEW CREDIT SELECT FUND, L.P.,  
LIBERTYVIEW SPECIAL OPPORTUNITIES FUND, L.P.,  
LIBERTYVIEW FUNDS, L.P. LIBERTYVIEW SPECIAL  
OPPORTUNITIES FUND II, L/P.,

Plaintiffs,

- against -

DYNEGY HOLDINGS, INC.,,

Defendant.

- - - - - X

Index No. 651998/11

July 21, 2011  
60 Centre Street  
New York, New York 10007

B E F O R E: THE HONORABLE O. PETER SHERWOOD, Justice.

A P P E A R A N C E S:

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Terry-Ann Volberg, CSR, CRR  
Official Court Reporter.

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THE CLERK: Libertyview Credit Opportunities v.  
Dynegy Holdings, Index Number 651998/2011.

THE COURT: Counsel, your appearances, please.

MS. SADIGHI: Good afternoon, your Honor.

Sheila Sadighi of Lowenstein Sandler for  
plaintiffs Libertyview Funds here together with my  
colleague, Amiad Kushner.

So your Honor knows, I will be filing a pro hac  
motion on -- Amiad will be filing the motion to which  
Mr. Kurtz' firm consented.

THE COURT: Preliminarily, welcome. I am happy  
to have you participate even though the motion has not  
reached my desk yet, it has not been signed.

MS. SADIGHI: I appreciate that, your Honor.  
Thank you.

MR. KURTZ: Good afternoon, your Honor. Glenn  
Kurtz of White & Case. I am here today on behalf of the  
defendant Dynegy Holdings Inc.

THE COURT: This was just handed to me. I must  
tell you I have not read it. You will have to educate me.

MS. SADIGHI: That's fine, your Honor.

First and foremost, I would like to clarify the  
relief we are seeking today. It's very limited. All the  
plaintiffs are asking for today is that your Honor please  
enter a hearing date and an expedited briefing schedule

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for our application for a temporary restraining order pending a preliminary injunction motion. So that's all we are seeking today, but we will be back if your Honor so enters the order to seek next week a temporary restraining order pending our motion for a preliminary injunction of the defendant Dynegy Holdings Inc. or DHI's proposed findings and transaction.

In a nutshell, your Honor, our clients are funds that own debt that is guaranteed by DHI. The plaintiffs are third-party beneficiaries under a guaranty given by DHI to ensure that their debt liens are paid. As part of the guaranty that DHI has given it affirmatively covenanted that it would not transfer or divest itself of the assets that support the guaranty unless the guaranty follows the assets to the new transferee.

DHI is a holding company. As such it conducts its primary business and all of its assets are the operations, the cash flows of its operating power plant facilities which are owned through a structure of direct and indirect subsidiaries. And as a result DHI, when it was agreeing to provide credit support to this debt, be the guarantor of this debt, held itself out on the basis of its consolidated operations, its consolidated financials, otherwise as a guarantor its value is effectively nothing because it's a shell company.

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So our clients, as purchasers of the debt guaranteed by DHI, bought into this debt based in large part upon the credit support provided through this guaranty under which DHI said it would basically stay the same guarantor it was to the extent that it's able to control that.

So we are here asking to enjoin a transaction that in our view violates that affirmative covenant under the guaranty because what DHI has said it's going to do in a proposed restructuring that will close next week according to its current schedule, is that it is taking the real assets of the company, the only ones that generate any revenues that contribute all the upstream cash flows to DHI, our guarantor, it's taking them through a series of very unbelievably complex restructuring transactions. It's going to move them into these bankruptcy remote ringfenced entities where they won't be able to be touched by DHI's creditors.

So that's what it's proposing.

In connection with that transaction it's not only going to isolate the only real assets that support our guaranty, but it is also causing the subsidiaries to restrict their own ability to send those cash flows back upstream to DHI.

So DHI is saying two things. It's saying,

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number one, yes, we have told you every year that all of our operating revenues are contributed by the subsidiaries. You know, last year they contributed \$923 million. We rely on that money. That's how we pay our debts and obligations. We are going to limit them so they can't possibly upstream more than \$225 million if they even produce that much.

And based on the public filings that DHI put out there it seems pretty clear to us that even if those subsidiaries produce that amount of money it's not going to be sufficient to cover DHI's debt.

THE COURT: Who is the borrower of the debt that Libertyview Credit Opportunities holds? One of DHI's subsidiaries?

MS. SADIGHI: The certificate -- the plaintiffs own what are referred to as pass-through trust certificates. So they own certificates in a trust that holds notes given by owner-lessors related to this 2001 leverage lease transaction.

Essentially DHI bought six power plant facilities in New York, and in order to get long-term financing for the asset acquisition it structured this giant asset backed sale lease backed transaction. So the way that that is structured is the DHI subsidiaries bought the power plants, they then sold them to the

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owner-lessors.

THE COURT: To the trust, essentially?

MS. SADIGHI: Right. So the money --

THE COURT: And they leased back the power plants from the trusts?

MS. SADIGHI: That's exactly right, your Honor. They pay their lease payments. It's the lease payments made by --

THE COURT: What is it that is being transferred here?

MS. SADIGHI: So what's being -- DHI's assets as a holding company, it's assets are, as it said, all of its operating revenues, all of the money, all of the real assets that are at the operating level. So what it's doing is it's transferring outside of its reach.

This is the argument that we say we need the court to weigh in on because we say DHI is slicing the baloney too thin. On the one hand it holds itself out and says when you look at DHI as a guarantor and you are trying to assess whether or not it is creditworthy, and DHI was trying to induce certificate holders to rely on its creditworthiness because it knew this --

THE COURT: Here's what I am struggling to understand: There are hard assets owned by the trust that is indebted to your clients.



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MS. SADIGHI: There are lease --

THE COURT: DHI is merely a guarantor of that debt. Do I have that right?

MS. SADIGHI: DHI is a guarantor of that debt, and DHI, the DHI entity that supports that debt sits at the top of this consolidated family of subsidiaries. And so the assets -- what DHI said is we will guaranty your debt, but, you know, putting that debt aside when you just try to decide whether it is a good credit risk, whether we will be able to make good on the guaranty if the lessees default on the leases, look at what we do. Here is what we do. Here are our assets. Our assets are cash.

THE COURT: I think I understand that.

What I am still not clear on is whether the borrower sits there with real assets -- it sounds like they do -- whether the borrower has any real assets, not the guarantor. I am not at the guarantor level yet. That's DHI.

And so my understanding from you, I have not read any of the papers, is that the borrower owns these power plants that are leased by, that are leased by the operating companies that are controlled by DHI; is that right?

MS. SADIGHI: That's right, but they have been devalued.

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THE COURT: So that's what I am trying to understand, how this restructuring that DHI is planning to proceed with devalues the loan as opposed to the guaranty of the loan.

MS. SADIGHI: It is devaluing the guaranty of the loan.

THE COURT: I get that.

MS. SADIGHI: But that's all we are trying to avoid, sir.

THE COURT: I get that too.

I am trying to understand whether the loan itself is being impaired in anyway.

MS. SADIGHI: The loan itself is being impaired to the extent that right now DHI has all of these assets directly underneath it. It has basically 14, I think 17 main power generator plants. One of them is being shuttered, two of them are the subject of our eleven lease transactions.

THE COURT: That will continue in operation?

MS. SADIGHI: Well, who knows, because --

THE COURT: As of right now you have not given any notice that they will be shuttered.

MS. SADIGHI: We haven't although the clear understanding on the street and that is reflected in the effectiveness of this proposed transaction on the trading

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price of our debt is clearly an understanding that the transaction will effect it because the facilities that are the subject of the lease transaction, the funds are certificates, they are being left out of this restructuring deliberately. DHI's counsel, restructuring counsel said on a lenders call next week, those facilities that are out there, we are leaving them outside of the ringfence because they provide no collateral, they provide no value to the collateral package. They have listed them as substantially impaired. They took a writeoff on them years ago. They are not doing anything.

So it is already a credit risk and already likely that we need to have this credit support by DHI under the guaranty and it will be even more so because it's basically being strangled. It's like, you know, a little bit -- they are taking all of the healthy, good assets, and they are saying we have 14 great power plants. We can get value off of those so we will move those away from you, certificate holders, my clients, so that they don't have to support the guaranty because it's a burden to support these two nonperforming assets. We are leaving those out in the cold. They are useless.

THE COURT: Counsel, I really think I understand that part of it, all that you have been waxing eloquently on. I got that early on, but I am still struggling for an

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answer to my question. Somehow, for some reason or other, either I am not following you or you are evading my question. It's one of the two.

MS. SADIGHI: I am not trying to evade the questions. So let me make sure I understand -- you are asking the question: What assets is DHI as guarantor transferring?

THE COURT: No, I am not getting to the guarantor level. I keep telling you that. I understand why you are here. I get it.

What I am trying to understand is, tell me something about, a level above that, the direct level where you are, the relationship between -- what stands under this particular loan, not what stands under the guaranty, I get it, but what stands under the loan.

Do you understand me?

MS. SADIGHI: I believe so.

The loans that are evidenced by our clients debt were used to purchase the two power plants that are the nonperforming assets that DHI is leaving out of the restructure.

THE COURT: Who is paying back the loan now?

MS. SADIGHI: Currently the lessees of the facilities are still paying the lease obligations.

THE COURT: So they are performing?

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2 MS. SADIGHIY: They are performing, yes, but  
3 they don't have to be in default for us to have a right to  
4 enforce the guaranty.

5 THE COURT: I get that.

6 MS. SADIGHI: All right.

7 THE COURT: I really understand that you are  
8 going after the guarantor.

9 MS. SADIGHI: Yes.

10 THE COURT: I said that to you how many times?  
11 How many times have I told that you?

12 MR. KUSHNER: Several times.

13 THE COURT: You don't have to answer.

14 Oh gosh. All right.

15 So you want to, you want to come back in a short  
16 time to get a TRO. I get it.

17 MS. SADIGHI: Yes, your Honor. We would like to  
18 come back next week, give DHI an opportunity to put in  
19 opposition papers for us to reply and then have your Honor  
20 hear the TRO.

21 THE COURT: Let me hear from DHI.

22 MR. KURTZ: Thank you, your Honor.

23 Glenn Kurtz.

24 I would like to cover three points, I think, and  
25 I would like to start just with some underlying facts  
26 which I don't think were accurately presented to your

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Honor. And I think you asked some questions that go to the heart of this.

But let me focus for a minute on the reorganization itself, the restructuring, where it's been mischaracterized that DHI is a guarantor, has some hard assets and generating assets like plants and intends to get rid of them in ringfencing. That's simply not the case. DHI has nothing more than equity in a series of other companies. And there is going to be some movement of companies to separate out coal assets from gas assets, coal generated energy from gas generated energy in order to make two financeable entities and some other complicated and important matters.

At the end of today, before any restructuring is happening, DHI has under it a series of companies and under those series of companies are other companies and ultimately revenue generating assets. When the restructuring closes DHI will have a series of companies under it, and they will have a series of companies under them that will hold the very same assets. So there is no change in the credit risk whatsoever.

THE COURT: Who is the guarantor?

MR. KURTZ: The guarantor is DHI.

THE COURT: DHI.

You are saying that none of these assets are

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going anywhere?

MR. KURTZ: No.

THE COURT: But what I understood counsel to say is that the restructuring would make it more difficult for them to reach the hard assets that are now controlled, owned, are now assets, to use your words, DHI has an equity interest in, and so they are concerned that they are, your phrase was, bankruptcy remote?

MS. SADIGHI: Bankruptcy remote ringfenced assets.

THE COURT: That's what I heard her say. I am not so sure you responded to that.

MR. KURTZ: Let me respond to that.

We know, what I did say, was that all of the assets are still there.

In terms of ringfencing, making an entity bankruptcy remote, that does not do anything negative to its value. As it stands today DHI merely owns equity in companies that own or have equity in other companies that own the plants themselves. The only way you could monetize -- those are not responsible, those separate companies are not responsible for repaying the debt here in issue. The only way you could get to those companies would be to get a judgment in event of default, and there is no default, there is no contemplated default. You

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would get a default, go to the guarantor. There is no default, no contemplated default or inability to pay the debts as they come due. Then you go to the guarantor, get a judgment and then you have to execute.

Now what you have to execute against is their assets which would include equity in entities. The value of that equity would be no different. It may be increased to the extent that it was bankruptcy remote and ringfenced because that would ensure that there was unnecessary cash infusions made.

By the way, bankruptcy remote and ringfencing, that means there is an independent director that makes determinations as to equity dividends outside of a 225 million-dollar dividend that's going to be paid. Capital contributions will be made each and every year. The way it will work, technically \$400 million will be put into DHI. DHI will obtain another \$225 million a year from the subsidiaries. And DHI will have a 20 percent interest that's saleable in an entity that's worth, we are talking about \$3 billion. It will have more than sufficient assets to pay these debts when they become due.

More significantly, it will have the same assets as today, and, more significantly, there is nothing about the value of the assets at DHI today that will change its only equity. If you want to foreclose on equity, you come



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1  
2 to court to do so and that equity has a value. You don't  
3 get to just take money out of -- say we all had equity in  
4 some corporation. We don't get to go to the corporation  
5 and go into the bank accounts. All you can do is trade on  
6 your equity.

7 That's the background.

8 The reason primarily that we have a concern, why  
9 we oppose simply even a briefing schedule is a threshold  
10 issue here which is that there is absolutely no standing.  
11 Now I know you have not read the papers yet. When you do  
12 read the papers I think what you are going to be surprised  
13 by is there is an entire omission about the very section  
14 here at issue.

15 Let me go through some basic facts.

16 The plaintiffs are suing on a guaranty. They  
17 are not a party to the guaranty.

18 They say they are a third-party beneficiary.

19 THE COURT: Hold on.

20 MR. KURTZ: The guaranty, your Honor, is at  
21 Exhibit A of the papers that have being submitted by the  
22 plaintiffs.

23 THE COURT: Exhibit A, you say?

24 MR. KURTZ: It may be worthwhile for me to pause  
25 for a moment to note that these are very customary and  
26 complicated indenture documents. The way these work is

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that you have a trustee who is able to bring a lawsuit, seek remedies with respect to breaches. Individual holders of the debt have no such right and that is so an individual holder who simply wants to receive a tip is unable to highjack the facility and cause litigation at everyone's expense and also with a fee shift.

That's how it starts.

Of course they are not suing under the actual pass-through indenture which has the prohibition on bringing the lawsuit. What they are suing on is a guaranty that's related to that document.

Now, we go to the guaranty and we see that it is not in favor --

THE COURT: Wait a minute.

Is there a provision -- you have Exhibit A which says guaranty. Is that where I am supposed to be?

MR. KURTZ: I am in A.

THE COURT: I wanted to look at the indenture first.

MR. KURTZ: I am not sure --

MS. SADIGHI: That's not an exhibit.

MR. KURTZ: I am not sure that was presented to your Honor although we will certainly be submitting it in opposition.

THE COURT: Is there a provision of the guaranty

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I need to look at?

MR. KURTZ: Start with the first page.

The guaranty is not signed, it's not. There is no party here for the plaintiff or any of the certificate holders. As we see from the opening sentence it's a guarantor "in favor of the guaranteed parties as defined in Section 5 below."

And that actually works you through a series of other documents. But I will represent to the court, I am sure that counsel will not dispute me on this, none of the guaranteed parties includes certificate holders like plaintiff or anyone else although it certainly includes the trustee of the document that we will be submitting along.

So this is not a guaranty in favor of the plaintiffs. This is a guaranty in favor of the trustee, the party that's permitted to bring a lawsuit subject to getting a majority of people to -- this is not where thousands of individual certificate holders get to take action under the document. That's why you pay a trustee to act. It's the trustee that takes the actions that the trustee deems appropriate with some exceptions if the trustee declines to take action.

You then go, your Honor, to Section 7.1 which tells you who it is that can sue for any breach of the

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guaranty. That, of course, as one would expect includes the guaranty party and only the guaranty party.

Now these are the provisions, your Honor, that tell you who has the right to bring a claim for a purported violation of the guaranty, and that wasn't brought to your attention, but the only people who have the right are the guaranty people which includes the trustee under the pass-through trust we have been talking about. Certificate holders with very small holdings cannot come in here and sue under these instruments.

There is an argument that's being made, you will see it in the papers, that there are third-party beneficiaries, but the law, and it's from the New York Court of Appeals, in fact, plaintiffs rely on the very same case we would rely on, tells you, it is under Fourth Ocean Putnam Corp., 66 N.Y.2d 38, and that tells you, at jump cite 45, that you're a third-party beneficiary with a right to enforce a contract where no other party can recover or the language of the contract otherwise and clearly evidences an intent to permit enforcement.

Our contract has others that can enforce, the right parties, and you don't become -- by being somebody who gets a benefit from a document you have to take it as it comes which has enforcement rights and limitations. If you became a third-party beneficiary of a nonrecourse note

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you couldn't say I also want recourse. You take them as it comes. This is how it comes, your Honor. So there is absolutely no standing to pursue a case here.

The third point I wanted to raise briefly is the other provision of the guaranty that is at issue is Section 4.2 --

THE COURT: Unfortunately you only have about another 60 seconds because at that point I will turn into a pumpkin.

MR. KURTZ: Before that happens, it prevents --

THE COURT: 4.2?

MR. KURTZ: Yes. You can look at it at your leisure, but that's the provision and that's not changing. As I have already mentioned, all the same assets.

Those plants that counsel referred to, those plants don't -- are owned by DHI. It's not a DHI transfer at all. I don't think we should be --

THE COURT: Let me ask you this question.

We really are out of time. I can't keep the staff beyond 5:00 o'clock. You have been reading the papers. You understand that.

So why is it that the court should not allow them the opportunity, this expedited hearing, where I can hear your arguments in greater detail?

We are here at the end of the day and they are

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only here asking for a briefing schedule. What is the consequence of the court granting that relief?

MR. KURTZ: Your Honor, only the time that it takes to go through an expedited briefing and argument when there is absolutely no standing or threshold issue.

I am not sure in my whole career I have objected to timing, although, on a side note, I rather the timing be pushed 24 hours in each case.

THE COURT: If you are so sure of this, why don't you then agree to a briefing schedule focused on a very limited issue which is standing?

You don't have to spend -- I hear you when you say, Judge, we don't have to get past -- I don't know enough of the law, about the law because it requires me to know not only the law, but, more importantly, your documents. I have got to go through them. I have not had a chance to go through them. By setting up a briefing schedule limited to the question of standing I can come up to speed and have a reasonable conversation with both sides.

So why don't we limit the motion to that unless you have some big reason why you can't do it.

MS. SADIGHI: It would depend on the timing, your Honor, because if they want to oppose and brief the issue on standing they are going to put in their

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opposition tomorrow and we put our reply in Monday morning, and that's decided Monday, because the problem is --

THE COURT: I understand that.

MS. SADIGHI: Your Honor, I am sensitive to the time so I won't go through the issues that I believe are incorrect.

THE COURT: Do you have any problem doing that quick turnaround given what we are talking about?

MR. KURTZ: I am happy to proceed in that fashion.

THE COURT: Fine. Let's do that.

What time tomorrow do you want?

MR. KURTZ: 6:00 o'clock.

(Continued on next page for certification.)

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THE COURT: 6:00 o'clock.

And then Monday morning first thing?

MS. SADIGHI: Nine a.m. Monday morning. If we  
are heard --

THE COURT: Contact my office tomorrow. I can  
give you a time Monday afternoon, probably.

MS. SADIGHI: Thank you, your Honor.

MR. KURTZ: Thank you, your Honor.


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C E R T I F I C A T E

I, Terry-Ann Volberg, C.S.R., an official court reporter of the  
State of New York, do hereby certify that the foregoing is a  
true and accurate transcript of my stenographic notes.

  
Terry-Ann Volberg, CSR, CRR  
Official Court Reporter.